

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JASON S. GASSNER,

Petitioner,

v.

19-CV-1159-LJV-JJM
DECISION & ORDER

K. CROWLEY, *Superintendent, Orleans
Correctional Facility,*

Respondent.

On August 29, 2019, the *pro se* petitioner, Jason S. Gassner, filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241. Docket Item 3. After this Court granted the respondent's request to convert Gassner's petition under section 2241 to a petition under 28 U.S.C. § 2254, Docket Item 9, the respondent answered Gassner's petition on March 10, 2020, Docket Item 16.¹ On April 15, 2020, this Court referred this case to United States Magistrate Judge Jeremiah J. McCarthy for all proceedings under 28 U.S.C. § 636(b)(1)(A) and (B). Docket Item 20.

On December 28, 2021, Judge McCarthy issued a Report and Recommendation ("R&R") finding that Gassner's petition should be denied. Docket Item 25. The parties did not object to the R&R, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify the findings or recommendations of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). The court must

¹ Gassner did not file a reply in further support of his petition.

review *de novo* those portions of a magistrate judge's recommendation to which a party objects. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 requires a district court to review the recommendation of a magistrate judge to which no objections are raised. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge McCarthy's R&R as well as the parties' submissions to him. Based on that review and the absence of any objections, the Court accepts and adopts Judge McCarthy's recommendation to deny Gassner's petition for a writ of habeas corpus.

For the reasons stated above and in the R&R, Gassner's petition for a writ of habeas corpus, Docket Item 3, is DENIED. The Clerk of the Court shall close the case.

The Court certifies under 28 U.S.C. § 2253(c)(2) that because the issues raised here are not the type of issues that a court could resolve in a different manner, and because these issues are not debatable among jurists of reason, the petitioner has failed to make a substantial showing of the denial of a constitutional right. Accordingly, the Court denies a certificate of appealability. Gassner must file any notice of appeal with the Clerk's Office, United States District Court, Western District of New York, within 30 days of the date of judgment in this action.

SO ORDERED.

Dated: March 31, 2022
Buffalo, New York



LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE